REMARKS

In the Final Office Action mailed on May 13, 2008, the Examiner rejected claims 1-3, 17-19 and 33 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0184638 to Agnihotri et al. in view of U.S. Patent Publication No. 2005/0080858 to Pessach; rejected claims 4, 6-16, 20 and 22-32 under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al. and Pessach in view of U.S. Patent Publication No. 2003/0237097 to Marshall et al. and rejected claims 5 and 21 under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., Pessach and Marshall et al. in view of U.S. Patent No. 6,637,027 to Breslauer et al.

In rejecting independent claims 1, 17 and 33, the Examiner asserts it would have been obvious to modify Agnihotri with Pessach for the purpose of "allowing subscribers to decide who can know about their availability of resources." This motivation to combine is improper.

First, a purpose of Pessach is the sharing of resources. Thus, one peer device must inform another peer device that it has available resources. At that point, the alleged privacy in Pessach is broken. Thus, Pessach does not support this alleged privacy as suggested by the Examiner.

In addition, to the extent the Examiner is arguing that the owner of a peer device has the power to NOT share the availability in his peer device, Applicant does not find support for that conclusion in either paragraph [0095] or [0111] of Pessach. In other words, if the Examiner is suggesting that peer device A has available resources and receives requests for resources from peer devices X and Y, the owner of peer device A can elect to let peer device X know it has available resources while not allowing peer

device Y to know it has available resources. Applicant cannot find a description of this selectivity in paragraphs [0095] and [0111].

Applicant also argues that the combination of Agnihotri and Pessach is improper because a) they are divergent systems and b) the combination destroys some purposes of Agnihotri.

Agnihotri uses centralized control via resource sharing controller 370 and resource sharing server 130 to determine which resources are to be shared and when. <u>See</u> <u>generally</u> paragraph [0037]. Pessach is a peer-to-peer system without centralized control. <u>See generally</u> paragraph [0006]. Applicant asserts it is improper to combine these two divergent references because the end result cannot be a system that is both centralized and not centralized.

In addition, the proposed combination destroys some of the purposes of Agnihotri. One purpose of Agnihotri is to use resource sharing controller 370 to program redundant playback devices in case an additional conflict arises. <u>See</u> paragraph [0037]. Pessach does not do this because it does not have a centralized resource where it can go to look for secondary and tertiary peer devices for redundancy. Thus, to re-invent Agnihotri into a decentralized peer-to-peer system as suggested by Examiner using Pessach would destroy Agnihotri's ability to program redundant playback devices from a centralized source.

Agnihotri also reduces the amount of bandwidth used to determine resource availability. As stated previously, resource sharing server 130 receives the request for available resources. <u>See</u> paragraph [0039] ("When resource sharing server 130 receives a resource availability request ..."). Thus, the request in Agnihotri et al. is unicast from a

single DVR to the resource sharing server 130 and not broadcast to a plurality of networked DVRs as presently claimed.

Pessach on the other hand goes to great lengths describing his multicasting system. See generally paragraphs [0095] - [0102]. The multicasting system of Pessach inherently consumes more bandwidth than Agnihotri's unicast system. Again, it is unclear how two divergent systems can be combined where the resultant combination results in increased network traffic beyond that proposed by Agnihotri.

With respect to claims 4 and 20, Applicant does not understand the Examiner's rejection. Claims 4 and 20 recite one DVR instructing a second DVR to tune to a particular channel. Marshall's paragraph [0015] recites a computer 110 being used to instruct a PVR to tune to a channel. Computer 110 is presented in Marshall's Fig. 1 alongside a plurality of PVRs. Since computer 110 is not a PVR as shown by Marshall, it follows that the tuning instruction referenced in Marshall's paragraph [0015] does not come from a "requesting DVR" as recited in claims 4 and 20.

In rejecting claims 14 and 30, the Examiner asserts Agnihotri et al. teach commands from the requesting DVR to the granting DVR in paragraph [0030]. This is incorrect. Agnihotri et al. describe commands from a remote control and not a requesting DVR in paragraph [0030]. Applicant notes the Examiner did not respond to this argument in the Final Rejection.

In rejecting claim 5, the Examiner asserts Agnihotri et al. describes advising the requesting DVR that said access is not available in paragraph [0039]. Applicant disagrees. Nowhere in paragraph [0039] is accessibility of a particular channel discussed. Paragraph [0039] describes determining which DVR is available to perform a task based

on video playback device (VPD) data files 401, 402 and 403. VPD data files only store information related to a DVR's a) recording schedule, b) disk statistics (e.g., how much free space is available for recording new material) and c) network address. A VPD data file does not indicate which channels a DVR has conditional access to receive.

In response to this argument, the Examiner asserts he relied on Breslauer to teach the accessibility of a particular channel. However, page 16 of the Final Rejection states:

> Agnihotri discloses the method wherein advising the requesting DVR that said access in not available (see page 4, paragraph 39)

Applicant asserts that the Examiner's arguments do not parallel the rationale provided in rejecting claim 5.

In addition, the Examiner asserts that Breslauer teaches one DVR advising a second DVR that it does not have access to a particular channel in column 8, lines 20-28 and column 9, lines 57-63. Applicant disagrees. Nowhere in these passages does Breslauer et al. describe any interaction between two devices. It appears a single device is determining if access can be granted for a particular piece of content in Breslauer et al.'s column 8, lines 20-28 and column 9, lines 57-63. Thus, there is no advising going on from one DVR to another.

In response to this argument, the Examiner asserts that since Breslauer is teaching conditional access for a single machine to a particular channel or multimedia segment and Agnihotri is teaching communication between plural DVRs, it follows that the plural DVRs could be modified in Agnihotri to share conditional access information. The Examiner is assuming that is permissible for one device to send a copy of its conditional access data to another device. However, the Examiner fails to comment on how this

shared conditional access information will be controlled. Since conditional access systems are designed to keep some devices from receiving some forms of content, it follows that if this information is shared too freely, the system would break down. Thus, Applicant asserts that the proposed combination of Agnihotri, Pessach, Marshall and Breslauer would destroy conditional access systems and thus would not be obvious to one of ordinary skill in the art.

Finally, in rejecting claim 21, the Examiner continues to assert that intermediate storage allows for the combination of Agnihotri, Pessach, Marshall and Breslauer. Claim 21 does not recite intermediate storage; therefore Applicant does not understand its relevance in supporting this rejection.

Claims not specifically mentioned above are allowable due to their dependence on an allowed claim.

CONCLUSION

No additional fees are due for this response. However, the Office is authorized to charge any additional fees or underpayments of fees (including fees for petitions for extensions of time) under 37 C.F.R. 1.16 and 1.17 to account number 502117. Any overpayments should be credited to the same account.

Applicant respectfully requests reconsideration of the present application, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance. The Applicant's representative can be reached at the below telephone number if the Examiner has any questions.


Respectfully submitted,


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